

ASSEMBLY BILL

No. 5

**Introduced by Assembly Member Roger Hernández
(Coauthor: Assembly Member Eduardo Garcia)**

July 16, 2015

An act to amend Section 50199.7 of the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as introduced, Roger Hernández. Income taxes: credits: low-income housing: farmworker housing assistance.

Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, personal income, and corporation income tax credit amounts among low-income housing projects based on federal law. Existing law allows the credit for buildings located in designated difficult development areas or qualified census tracts that are restricted to having 50% of its occupants be special needs households, as defined, even if the taxpayer receives specified federal credits, if the credit allowed under this section does not exceed 30% of the eligible basis of that building. Existing law limits the total annual amount of the credit that the committee may allocate to \$70 million per year and allows \$500,000 per year of that amount to be allocated for projects to provide farmworker housing, as specified. Existing law defines farmworker housing to mean housing for agricultural workers that is available to, and occupied by, only farmworkers and their households.

This bill, under the insurance taxation law, the Personal Income Tax Law, and the Corporation Tax Law, would modify the definition of applicable percentage relating to qualified low-income buildings that are farmworker housing projects, as provided. The bill would authorize the California Tax Credit Allocation Committee to allocate that credit even if the taxpayer receives specified federal and state credits or only state credits. The bill would increase the amount the committee may allocate to farmworker housing projects from \$500,000 to \$25,000,000 per year. The bill would also redefine farmworker housing to mean housing for agricultural workers that is available to, and occupied by, not less than 50% of farmworkers and their households.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 50199.7 of the Health and Safety Code
- 2 is amended to read:
- 3 50199.7. As used in this chapter:
- 4 (a) "Committee" means the Mortgage Bond and Tax Credit
- 5 Allocation Committee, which is renamed the California Tax Credit
- 6 Allocation Committee. All references to "committee" shall mean
- 7 the California Tax Credit Allocation Committee.
- 8 (b) "Household" has the same meaning as defined in Section
- 9 7602 of Title 25 of the California Code of Regulations.
- 10 (c) "Housing credit" means the tax credit for low-income rental
- 11 housing provided under Section 42 of the federal Internal Revenue
- 12 Code (26 U.S.C. Sec. 42).
- 13 (d) "Housing credit applicant" means any owner, sponsor, or
- 14 developer of a qualifying low-income building or project who
- 15 applies to the committee for either of the following:
- 16 (1) An allocation of a portion of the current state housing credit
- 17 ceiling.
- 18 (2) A reservation of a portion of the anticipated state housing
- 19 credit ceiling of a subsequent year.

(e) “Housing credit ceiling” means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(h)(3)(C)).

(f) “Qualified low-income building” or “project” has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(c)(2)).

(g) “Agricultural worker” or “farmworker” shall have the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code.

(h) “Farmworker housing” means housing for agricultural workers that is available to, and occupied by, ~~only~~ *not less than 50 percent of* farmworkers and their households. The committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, such emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency.

SEC. 2. Section 12206 of the Revenue and Taxation Code is amended to read:

12206. (a) (1) There shall be allowed as a credit against the ~~“tax”~~ ~~(as “tax,” as described by Section 12201)~~ 12201, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue ~~Code~~, *Code* except as otherwise provided in this section.

(2) “Taxpayer,” for purposes of this section, means the sole owner in the case of a “C” corporation, the partners in the case of a partnership, and the shareholders in the case of an “S” corporation.

(3) “Housing sponsor,” for purposes of this section, means the sole owner in the case of a “C” corporation, the partnership in the case of a partnership, and the “S” corporation in the case of an “S” corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project’s need for the credit for economic feasibility in accordance with the requirements of this section.

(A) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and

1 Safety Code, that are allocated credits solely under the set-aside
2 described in subdivision (c) of Section 50199.20 of the Health and
3 Safety Code, the low-income housing project shall be located in
4 California and shall meet either of the following requirements:

5 (i) The project's housing sponsor ~~shall have~~ *has* been allocated
6 by the California Tax Credit Allocation Committee a credit for
7 federal income tax purposes under Section 42 of the Internal
8 Revenue Code.

9 (ii) It ~~shall qualify~~ *qualifies* for a credit under Section
10 42(h)(4)(B) of the Internal Revenue Code.

11 (B) The California Tax Credit Allocation Committee shall not
12 require fees for the credit under this section in addition to those
13 fees required for applications for the tax credit pursuant to Section
14 42 of the Internal Revenue Code. The committee may require a
15 fee if the application for the credit under this section is submitted
16 in a calendar year after the year the application is submitted for
17 the federal tax credit.

18 (C) (i) For a project that receives a preliminary reservation of
19 the state low-income housing tax credit, allowed pursuant to
20 subdivision (a), on or after January 1, 2009, and before January 1,
21 2016, the credit shall be allocated to the partners of a partnership
22 owning the project in accordance with the partnership agreement,
23 regardless of how the federal low-income housing tax credit with
24 respect to the project is allocated to the partners, or whether the
25 allocation of the credit under the terms of the agreement has
26 substantial economic effect, within the meaning of Section 704(b)
27 of the Internal Revenue Code.

28 (ii) This subparagraph shall not apply to a project that receives
29 a preliminary reservation of state low-income housing tax credits
30 under the set-aside described in subdivision (c) of Section 50199.20
31 of the Health and Safety Code unless the project also receives a
32 preliminary reservation of federal low-income housing tax credits.

33 (iii) This subparagraph shall cease to be operative with respect
34 to any project that receives a preliminary reservation of a credit
35 on or after January 1, 2016.

36 (2) (A) The California Tax Credit Allocation Committee shall
37 certify to the housing sponsor the amount of tax credit under this
38 section allocated to the housing sponsor for each credit period.

1 (B) In the case of a partnership or an “S” corporation, the
2 housing sponsor shall provide a copy of the California Tax Credit
3 Allocation Committee certification to the taxpayer.

4 (C) The taxpayer shall attach a copy of the certification to any
5 return upon which a tax credit is claimed under this section.

6 (D) In the case of a failure to attach a copy of the certification
7 for the year to the return in which a tax credit is claimed under this
8 section, no credit under this section shall be allowed for that year
9 until a copy of that certification is provided.

10 (E) All elections made by the taxpayer pursuant to Section 42
11 of the Internal Revenue Code shall apply to this section.

12 (F) (i) Except as described in clause (ii), for buildings located
13 in designated difficult development areas (DDAs) or qualified
14 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
15 Internal Revenue Code, credits may be allocated under this section
16 in the amounts prescribed in subdivision (c), provided that the
17 amount of credit allocated under Section 42 of the Internal Revenue
18 Code is computed on 100 percent of the qualified basis of the
19 building.

20 (ii) Notwithstanding clause (i), the California Tax Credit
21 Allocation Committee may allocate the credit for buildings located
22 in DDAs or QCTs that are restricted to having 50 percent of its
23 occupants be special needs households, as defined in the California
24 Code of Regulations by the California Tax Credit Allocation
25 Committee, even if the taxpayer receives federal credits pursuant
26 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
27 that the credit allowed under this section shall not exceed 30
28 percent of the eligible basis of the building.

29 (G) (i) The California Tax Credit Allocation Committee may
30 allocate a credit under this section in exchange for a credit allocated
31 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
32 amounts up to 30 percent of the eligible basis of a building if the
33 credits allowed under Section 42 of the Internal Revenue Code are
34 reduced by an equivalent amount.

35 (ii) An equivalent amount shall be determined by the California
36 Tax Credit Allocation Committee based upon the relative amount
37 required to produce an equivalent state tax credit to the taxpayer.

38 (c) Section 42(b) of the Internal Revenue Code shall be modified
39 as follows:

(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term “at risk of conversion,” with respect to an existing property means a property that satisfies all of the following criteria:

(A) The property is a multifamily rental housing development in which at least 50 percent of the units receive governmental assistance pursuant to any of the following:

(i) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance pursuant to Section 8 of the United States Housing Act of 1937, Section 1437f of Title 42 of the United States Code, as amended.

(ii) The Below-Market-Interest-Rate Program pursuant to Section 221(d)(3) of the National Housing Act, Sections 1715l(d)(3) and (5) of Title 12 of the United States Code.

(iii) Section 236 of the National Housing Act, Section 1715z-1 of Title 12 of the United States Code.

(iv) Programs for rent supplement assistance pursuant to Section 101 of the Housing and Urban Development Act of 1965, Section 1701s of Title 12 of the United States Code, as amended.

1 (v) Programs pursuant to Section 515 of the Housing Act of
2 1949, Section 1485 of Title 42 of the United States Code, as
3 amended.

4 (vi) The low-income housing credit program set forth in Section
5 42 of the Internal Revenue Code.

6 (B) The restrictions on rent and income levels will terminate or
7 the federal insured mortgage on the property is eligible for
8 prepayment any time within five years before or after the date of
9 application to the California Tax Credit Allocation Committee.

10 (C) The entity acquiring the property enters into a regulatory
11 agreement that requires the property to be operated in accordance
12 with the requirements of this section for a period equal to the
13 greater of 55 years or the life of the property.

14 (D) The property satisfies the requirements of Section 42(e) of
15 the Internal Revenue Code regarding rehabilitation expenditures,
16 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
17 apply.

18 (4) (A) *In the case of any qualified low-income building that*
19 *is (i) restricted to farmworker housing, as defined by Section*
20 *50199.77 of the Health and Safety Code, and (ii) is federally*
21 *subsidized, the term “applicable percentage” means for each of*
22 *the first three years, 20 percent of the qualified basis of the*
23 *building, and for the fourth year, 15 percent of the qualified basis*
24 *of the building.*

25 (B) *The California Tax Credit Allocation Committee may*
26 *allocate the credit pursuant to this paragraph even if the taxpayer*
27 *receives federal credits, pursuant to Section 42(d)(5)(B) of the*
28 *Internal Revenue Code, and state credits or only state credits.*

29 (d) The term “qualified low-income housing project” as defined
30 in Section 42(c)(2) of the Internal Revenue Code is modified by
31 adding the following requirements:

32 (1) The taxpayer shall be entitled to receive a cash distribution
33 from the operations of the project, after funding required reserves,
34 ~~which,~~ *that*, at the election of the taxpayer, is equal to:

35 (A) An amount not to exceed 8 percent of the lesser of:

36 (i) The owner equity ~~which~~ *that* shall include the amount of the
37 capital contributions actually paid to the housing sponsor and shall
38 not include any amounts until they are paid on an investor note.

39 (ii) Twenty percent of the adjusted basis of the building as of
40 the close of the first taxable year of the credit period.

1 (B) The amount of the cashflow from those units in the building
2 that are not low-income units. For purposes of computing cashflow
3 under this subparagraph, operating costs shall be allocated to the
4 low-income units using the “floor space fraction,” as defined in
5 Section 42 of the Internal Revenue Code.

6 (C) Any amount allowed to be distributed under subparagraph
7 (A) that is not available for distribution during the first five years
8 of the compliance period may ~~accumulate and be~~ *be accumulated*
9 *and* distributed any time during the first 15 years of the compliance
10 period but not thereafter.

11 (2) The limitation on return shall apply in the aggregate to the
12 partners if the housing sponsor is a partnership and in the aggregate
13 to the shareholders if the housing sponsor is an “S” corporation.

14 (3) The housing sponsor shall apply any cash available for
15 distribution in excess of the amount eligible to be distributed under
16 paragraph (1) to reduce the rent on rent-restricted units or to
17 increase the number of rent-restricted units subject to the tests of
18 Section 42(g)(1) of the Internal Revenue Code.

19 (e) The provisions of Section 42(f) of the Internal Revenue Code
20 shall be modified as follows:

21 (1) The term “credit period” as defined in Section 42(f)(1) of
22 the Internal Revenue Code is modified by substituting “four taxable
23 years” for “10 taxable years.”

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code shall not apply
26 to the tax credit under this section.

27 (3) Section 42(f)(3) of the Internal Revenue Code is modified
28 to read:

29 If, as of the close of any taxable year in the compliance period,
30 after the first year of the credit period, the qualified basis of any
31 building exceeds the qualified basis of that building as of the close
32 of the first year of the credit period, the housing sponsor, to the
33 extent of its tax credit allocation, shall be eligible for a credit on
34 the excess in an amount equal to the applicable percentage
35 determined pursuant to subdivision (c) for the four-year period
36 beginning with the ~~later of the taxable years~~ *taxable year* in which
37 the increase in qualified basis occurs.

38 (f) The provisions of Section 42(h) of the Internal Revenue
39 Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(4) ~~Five hundred thousand dollars (\$500,000)~~ *Twenty-five million dollars (\$25,000,000)* per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to

1 provide farmworker housing, as defined in subdivision (h) of
2 Section 50199.7 of the Health and Safety Code.

3 (h) The term “compliance period” as defined in Section 42(i)(1)
4 of the Internal Revenue Code is modified to mean, with respect to
5 any building, the period of 30 consecutive taxable years beginning
6 with the first taxable year of the credit period with respect thereto.

7 (i) (1) Section 42(j) of the Internal Revenue Code shall not be
8 applicable and the provisions in paragraph (2) shall be substituted
9 in its place.

10 (2) The requirements of this section shall be set forth in a
11 regulatory agreement between the California Tax Credit Allocation
12 Committee and the housing sponsor, ~~which~~ *and the regulatory*
13 *agreement shall be subordinated, when required, to any lien or*
14 *encumbrance of any banks or other institutional lenders to the*
15 *project. The regulatory agreement entered into pursuant to*
16 *subdivision (f) of Section 50199.14 of the Health and Safety Code,*
17 *shall apply, providing provided that the agreement includes all of*
18 *the following provisions:*

19 (A) A term not less than the compliance period.

20 (B) A requirement that the agreement be recorded in the official
21 records of the county in which the qualified low-income housing
22 project is located.

23 (C) A provision stating which state and local agencies can
24 enforce the regulatory agreement in the event the housing sponsor
25 fails to satisfy any of the requirements of this section.

26 (D) A provision that the regulatory agreement shall be deemed
27 a contract enforceable by tenants as third-party beneficiaries thereto
28 and ~~which~~ *that* allows individuals, whether prospective, present,
29 or former occupants of the building, who meet the income
30 limitation applicable to the building, the right to enforce the
31 regulatory agreement in any state court.

32 (E) A provision incorporating the requirements of Section 42
33 of the Internal Revenue Code as modified by this section.

34 (F) A requirement that the housing sponsor notify the California
35 Tax Credit Allocation Committee or its designee and the local
36 agency that can enforce the regulatory agreement if there is a
37 determination by the Internal Revenue Service that the project is
38 not in compliance with Section 42(g) of the Internal Revenue Code.

39 (G) A requirement that the housing sponsor, as security for the
40 performance of the housing sponsor’s obligations under the

1 regulatory agreement, assign the housing sponsor's interest in rents
2 that it receives from the project, provided that until there is a
3 default under the regulatory agreement, the housing sponsor is
4 entitled to collect and retain the rents.

5 (H) The remedies available in the event of a default under the
6 regulatory agreement that is not cured within a reasonable cure
7 period, include, but are not limited to, allowing any of the parties
8 designated to enforce the regulatory agreement to collect all rents
9 with respect to the project; taking possession of the project and
10 operating the project in accordance with the regulatory agreement
11 until the enforcer determines the housing sponsor is in a position
12 to operate the project in accordance with the regulatory agreement;
13 applying to any court for specific performance; securing the
14 appointment of a receiver to operate the project; or any other relief
15 as may be appropriate.

16 (j) (1) The committee shall allocate the housing credit on a
17 regular basis consisting of two or more periods in each calendar
18 year during which applications may be filed and considered. The
19 committee shall establish application filing deadlines, the maximum
20 percentage of federal and state low-income housing tax credit
21 ceiling that may be allocated by the committee in that period, and
22 the approximate date on which allocations shall be made. If the
23 enactment of federal or state law, the adoption of rules or
24 regulations, or other similar events prevent the use of two allocation
25 periods, the committee may reduce the number of periods and
26 adjust the filing deadlines, maximum percentage of credit allocated,
27 and the allocation dates.

28 (2) The committee shall adopt a qualified allocation plan, as
29 provided in Section 42(m)(1) of the Internal Revenue Code. In
30 adopting this plan, the committee shall comply with the provisions
31 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
32 ~~Code~~. *Code, respectively.*

33 (3) Notwithstanding Section 42(m) of the Internal Revenue
34 Code, the California Tax Credit Allocation Committee shall
35 allocate housing credits in accordance with the qualified allocation
36 plan and regulations, which shall include the following provisions:

37 (A) All housing sponsors, as defined by paragraph (3) of
38 subdivision (a), shall demonstrate at the time the application is
39 filed with the committee that the project meets the following
40 threshold requirements:

1 (i) The housing sponsor shall demonstrate there is a need and
2 demand for low-income housing in the community or region for
3 which it is proposed.

4 (ii) The project's proposed financing, including tax credit
5 proceeds, shall be sufficient to complete the project and that the
6 proposed operating income shall be adequate to operate the project
7 for the extended use period.

8 (iii) The project shall have enforceable financing commitments,
9 either construction or permanent financing, for at least 50 percent
10 of the total estimated financing of the project.

11 (iv) The housing sponsor shall have and maintain control of the
12 site for the project.

13 (v) The housing sponsor shall demonstrate that the project
14 complies with all applicable local land use and zoning ordinances.

15 (vi) The housing sponsor shall demonstrate that the project
16 development team has the experience and the financial capacity
17 to ensure project completion and operation for the extended use
18 period.

19 (vii) The housing sponsor shall demonstrate the amount of tax
20 credit that is necessary for the financial feasibility of the project
21 and its viability as a qualified low-income housing project
22 throughout the extended use period, taking into account operating
23 expenses, a supportable debt service, reserves, funds set aside for
24 rental subsidies, and required equity, and a development fee that
25 does not exceed a specified percentage of the eligible basis of the
26 project prior to inclusion of the development fee in the eligible
27 basis, as determined by the committee.

28 (B) The committee shall give a preference to those projects
29 satisfying all of the threshold requirements of subparagraph (A)
30 if both of the following apply:

31 (i) The project serves the lowest income tenants at rents
32 affordable to those tenants.

33 (ii) The project is obligated to serve qualified tenants for the
34 longest period.

35 (C) In addition to the provisions of subparagraphs (A) and (B),
36 the committee shall use the following criteria in allocating housing
37 credits:

38 (i) Projects serving large families in which a substantial number,
39 as defined by the committee, of all residential units—~~is~~ *are*
40 comprised of low-income units with three ~~and~~ *or* more bedrooms.

1 (ii) Projects providing single-room occupancy units serving
2 very low income tenants.

3 (iii) Existing projects that are “at risk of conversion,” as defined
4 by paragraph (3) of subdivision (c).

5 (iv) Projects for which a public agency provides direct or indirect
6 long-term financial support for at least 15 percent of the total
7 project development costs or projects for which the owner’s equity
8 constitutes at least 30 percent of the total project development
9 costs.

10 (v) Projects that provide tenant amenities not generally available
11 to residents of low-income housing projects.

12 (4) For purposes of allocating credits pursuant to this section,
13 the committee shall not give preference to any project by virtue
14 of the date of submission of its application except to break a tie
15 when two or more of the projects have an equal rating.

16 (k) Section 42(l) of the Internal Revenue Code shall be modified
17 as follows:

18 The term “secretary” shall be replaced by the term “California
19 Franchise Tax Board.”

20 (l) In the case where the state credit allowed under this section
21 exceeds the “tax,” the excess may be carried over to reduce the
22 “tax” in the following year, and succeeding years if necessary,
23 until the credit has been exhausted.

24 (m) The provisions of Section 11407(a) of Public Law 101-508,
25 relating to the effective date of the extension of the low-income
26 housing credit, shall apply to calendar years after 1993.

27 (n) The provisions of Section 11407(c) of Public Law 101-508,
28 relating to election to accelerate credit, shall not apply.

29 (o) This section shall remain in effect for as long as Section 42
30 of the Internal Revenue Code, relating to low-income housing
31 credits, remains in effect.

32 SEC. 3. Section 17058 of the Revenue and Taxation Code is
33 amended to read:

34 17058. (a) (1) There shall be allowed as a credit against the
35 “net tax” (as *tax*,” as defined in Section ~~17039~~) 17039, a state
36 low-income housing credit in an amount equal to the amount
37 determined in subdivision (c), computed in accordance with the
38 provisions of Section 42 of the Internal Revenue Code, *Code* except
39 as otherwise provided in this section.

1 (2) “Taxpayer” for purposes of this section means the sole owner
2 in the case of an individual, the partners in the case of a partnership,
3 and the shareholders in the case of an “S” corporation.

4 (3) “Housing sponsor” for purposes of this section means the
5 sole owner in the case of an individual, the partnership in the case
6 of a partnership, and the “S” corporation in the case of an “S”
7 corporation.

8 (b) (1) The amount of the credit allocated to any housing
9 sponsor shall be authorized by the California Tax Credit Allocation
10 Committee, or any successor thereof, based on a project’s need
11 for the credit for economic feasibility in accordance with the
12 requirements of this section.

13 (A) The low-income housing project shall be located in
14 California and shall meet either of the following requirements:

15 (i) Except for projects to provide farmworker housing, as defined
16 in subdivision (h) of Section 50199.7 of the Health and Safety
17 Code, that are allocated credits solely under the set-aside described
18 in subdivision (c) of Section 50199.20 of the Health and Safety
19 Code, the project’s housing sponsor has been allocated by the
20 California Tax Credit Allocation Committee a credit for federal
21 income tax purposes under Section 42 of the Internal Revenue
22 Code.

23 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
24 Internal Revenue Code.

25 (B) The California Tax Credit Allocation Committee shall not
26 require fees for the credit under this section in addition to those
27 fees required for applications for the tax credit pursuant to Section
28 42 of the Internal Revenue Code. The committee may require a
29 fee if the application for the credit under this section is submitted
30 in a calendar year after the year the application is submitted for
31 the federal tax credit.

32 (C) (i) For a project that receives a preliminary reservation of
33 the state low-income housing tax credit, allowed pursuant to
34 subdivision (a), on or after January 1, 2009, and before January 1,
35 2016, the credit shall be allocated to the partners of a partnership
36 owning the project in accordance with the partnership agreement,
37 regardless of how the federal low-income housing tax credit with
38 respect to the project is allocated to the partners, or whether the
39 allocation of the credit under the terms of the agreement has

1 substantial economic effect, within the meaning of Section 704(b)
2 of the Internal Revenue Code.

3 (ii) To the extent the allocation of the credit to a partner under
4 this section lacks substantial economic effect, any loss or deduction
5 otherwise allowable under this part that is attributable to the sale
6 or other disposition of that partner's partnership interest made prior
7 to the expiration of the federal credit shall not be allowed in the
8 taxable year in which the sale or other disposition occurs, but shall
9 instead be deferred until and treated as if it occurred in the first
10 taxable year immediately following the taxable year in which the
11 federal credit period expires for the project described in clause (i).

12 (iii) This subparagraph shall not apply to a project that receives
13 a preliminary reservation of state low-income housing tax credits
14 under the set-aside described in subdivision (c) of Section 50199.20
15 of the Health and Safety Code unless the project also receives a
16 preliminary reservation of federal low-income housing tax credits.

17 (iv) This subparagraph shall cease to be operative with respect
18 to any project that receives a preliminary reservation of a credit
19 on or after January 1, 2016.

20 (2) (A) The California Tax Credit Allocation Committee shall
21 certify to the housing sponsor the amount of tax credit under this
22 section allocated to the housing sponsor for each credit period.

23 (B) In the case of a partnership or an "S" corporation, the
24 housing sponsor shall provide a copy of the California Tax Credit
25 Allocation Committee certification to the taxpayer.

26 (C) The taxpayer shall, upon request, provide a copy of the
27 certification to the Franchise Tax Board.

28 (D) All elections made by the taxpayer pursuant to Section 42
29 of the Internal Revenue Code shall apply to this section.

30 (E) (i) Except as described in clause (ii), for buildings located
31 in designated difficult development areas (DDAs) or qualified
32 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
33 Internal Revenue Code, credits may be allocated under this section
34 in the amounts prescribed in subdivision (c), provided that the
35 amount of credit allocated under Section 42 of the Internal Revenue
36 Code is computed on 100 percent of the qualified basis of the
37 building.

38 (ii) Notwithstanding clause (i), the California Tax Credit
39 Allocation Committee may allocate the credit for buildings located
40 in DDAs or QCTs that are restricted to having 50 percent of its

1 occupants be special needs households, as defined in the California
2 Code of Regulations by the California Tax Credit Allocation
3 Committee, even if the taxpayer receives federal credits pursuant
4 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
5 that the credit allowed under this section shall not exceed 30
6 percent of the eligible basis of the building.

7 ~~(G)~~

8 (F) (i) The California Tax Credit Allocation Committee may
9 allocate a credit under this section in exchange for a credit allocated
10 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
11 amounts up to 30 percent of the eligible basis of a building if the
12 credits allowed under Section 42 of the Internal Revenue Code are
13 reduced by an equivalent amount.

14 (ii) An equivalent amount shall be determined by the California
15 Tax Credit Allocation Committee based upon the relative amount
16 required to produce an equivalent state tax credit to the taxpayer.

17 (c) Section 42(b) of the Internal Revenue Code shall be modified
18 as follows:

19 (1) In the case of any qualified low-income building placed in
20 service by the housing sponsor during 1987, the term “applicable
21 percentage” means 9 percent for each of the first three years and
22 3 percent for the fourth year for new buildings (whether or not the
23 building is federally subsidized) and for existing buildings.

24 (2) In the case of any qualified low-income building that receives
25 an allocation after 1989 and is a new building not federally
26 subsidized, the term “applicable percentage” means the following:

27 (A) For each of the first three years, the percentage prescribed
28 by the Secretary of the Treasury for new buildings that are not
29 federally subsidized for the taxable year, determined in accordance
30 with the requirements of Section 42(b)(2) of the Internal Revenue
31 Code, *Code* in lieu of the percentage prescribed in Section
32 42(b)(1)(A) of the Internal Revenue Code.

33 (B) For the fourth year, the difference between 30 percent and
34 the sum of the applicable percentages for the first three years.

35 (3) In the case of any qualified low-income building that receives
36 an allocation after 1989 and that is a new building that is federally
37 subsidized or that is an existing building that is “at risk of
38 conversion,” the term “applicable percentage” means the following:

1 (A) For each of the first three years, the percentage prescribed
2 by the Secretary of the Treasury for new buildings that are federally
3 subsidized for the taxable year.

4 (B) For the fourth year, the difference between 13 percent and
5 the sum of the applicable percentages for the first three years.

6 (4) For purposes of this section, the term “at risk of conversion,”
7 with respect to an existing property means a property that satisfies
8 all of the following criteria:

9 (A) The property is a multifamily rental housing development
10 in which at least 50 percent of the units receive governmental
11 assistance pursuant to any of the following:

12 (i) New construction, substantial rehabilitation, moderate
13 rehabilitation, property disposition, and loan management set-aside
14 programs, or any other program providing project-based assistance
15 pursuant to Section 8 of the United States Housing Act of 1937,
16 Section 1437f of Title 42 of the United States Code, as amended.

17 (ii) The Below-Market-Interest-Rate Program pursuant to
18 Section 221(d)(3) of the National Housing Act, Sections
19 1715l(d)(3) and (5) of Title 12 of the United States Code.

20 (iii) Section 236 of the National Housing Act, Section 1715z-1
21 of Title 12 of the United States Code.

22 (iv) Programs for rent supplement assistance pursuant to Section
23 101 of the Housing and Urban Development Act of 1965, Section
24 1701s of Title 12 of the United States Code, as amended.

25 (v) Programs pursuant to Section 515 of the Housing Act of
26 1949, Section 1485 of Title 42 of the United States Code, as
27 amended.

28 (vi) The low-income housing credit program set forth in Section
29 42 of the Internal Revenue Code.

30 (B) The restrictions on rent and income levels will terminate or
31 the federal insured mortgage on the property is eligible for
32 prepayment any time within five years before or after the date of
33 application to the California Tax Credit Allocation Committee.

34 (C) The entity acquiring the property enters into a regulatory
35 agreement that requires the property to be operated in accordance
36 with the requirements of this section for a period equal to the
37 greater of 55 years or the life of the property.

38 (D) The property satisfies the requirements of Section 42(e) of
39 the Internal Revenue Code regarding rehabilitation expenditures,

1 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
2 apply.

3 (4) (A) *In the case of any qualified low-income building that*
4 *is (i) restricted to farmworker housing, as defined by Section*
5 *50199.77 of the Health and Safety Code, and (ii) is federally*
6 *subsidized, the term “applicable percentage” means for each of*
7 *the first three years, 20 percent of the qualified basis of the*
8 *building, and for the fourth year, 15 percent of the qualified basis*
9 *of the building.*

10 (B) *The California Tax Credit Allocation Committee may*
11 *allocate the credit pursuant to this paragraph even if the taxpayer*
12 *receives federal credits, pursuant to Section 42(d)(5)(B) of the*
13 *Internal Revenue Code, and state credits or only state credits.*

14 (d) The term “qualified low-income housing project” as defined
15 in Section 42(c)(2) of the Internal Revenue Code is modified by
16 adding the following requirements:

17 (1) The taxpayer shall be entitled to receive a cash distribution
18 from the operations of the project, after funding required reserves,
19 that, at the election of the taxpayer, is equal to:

20 (A) An amount not to exceed 8 percent of the lesser of:

21 (i) The owner equity that shall include the amount of the capital
22 contributions actually paid to the housing sponsor and shall not
23 include any amounts until they are paid on an investor note.

24 (ii) Twenty percent of the adjusted basis of the building as of
25 the close of the first taxable year of the credit period.

26 (B) The amount of the cashflow from those units in the building
27 that are not low-income units. For purposes of computing cashflow
28 under this subparagraph, operating costs shall be allocated to the
29 low-income units using the “floor space fraction,” as defined in
30 Section 42 of the Internal Revenue Code.

31 (C) Any amount allowed to be distributed under subparagraph
32 (A) that is not available for distribution during the first five years
33 of the compliance period may be accumulated and distributed any
34 time during the first 15 years of the compliance period but not
35 thereafter.

36 (2) The limitation on return shall apply in the aggregate to the
37 partners if the housing sponsor is a partnership and in the aggregate
38 to the shareholders if the housing sponsor is an “S” corporation.

39 (3) The housing sponsor shall apply any cash available for
40 distribution in excess of the amount eligible to be distributed under

1 paragraph (1) to reduce the rent on rent-restricted units or to
2 increase the number of rent-restricted units subject to the tests of
3 Section 42(g)(1) of the Internal Revenue Code.

4 (e) The provisions of Section 42(f) of the Internal Revenue Code
5 shall be modified as follows:

6 (1) The term “credit period” as defined in Section 42(f)(1) of
7 the Internal Revenue Code is modified by substituting “four taxable
8 years” for “10 taxable years.”

9 (2) The special rule for the first taxable year of the credit period
10 under Section 42(f)(2) of the Internal Revenue Code shall not apply
11 to the tax credit under this section.

12 (3) Section 42(f)(3) of the Internal Revenue Code is modified
13 to read:

14 If, as of the close of any taxable year in the compliance period,
15 after the first year of the credit period, the qualified basis of any
16 building exceeds the qualified basis of that building as of the close
17 of the first year of the credit period, the housing sponsor, to the
18 extent of its tax credit allocation, shall be eligible for a credit on
19 the excess in an amount equal to the applicable percentage
20 determined pursuant to subdivision (c) for the four-year period
21 beginning with the taxable year in which the increase in qualified
22 basis occurs.

23 (f) The provisions of Section 42(h) of the Internal Revenue
24 Code shall be modified as follows:

25 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
26 applicable and instead the following provisions shall be applicable:

27 The total amount for the four-year *credit* period of the housing
28 credit dollars allocated in a calendar year to any building shall
29 reduce the aggregate housing credit dollar amount of the California
30 Tax Credit Allocation Committee for the calendar year in which
31 the allocation is made.

32 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
33 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
34 ~~not be applicable to this section.~~ *applicable*.

35 (g) The aggregate housing credit dollar amount that may be
36 allocated annually by the California Tax Credit Allocation
37 Committee pursuant to this section, Section 12206, and Section
38 23610.5 shall be an amount equal to the sum of all the following:

39 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
40 year, and, for the 2002 calendar year and each calendar year

1 thereafter, seventy million dollars (\$70,000,000) increased by the
2 percentage, if any, by which the Consumer Price Index for the
3 preceding calendar year exceeds the Consumer Price Index for the
4 2001 calendar year. For the purposes of this paragraph, the term
5 “Consumer Price Index” means the last Consumer Price Index for
6 All Urban Consumers published by the federal Department of
7 Labor.

8 (2) The unused housing credit ceiling, if any, for the preceding
9 calendar years.

10 (3) The amount of housing credit ceiling returned in the calendar
11 year. For purposes of this paragraph, the amount of housing credit
12 dollar amount returned in the calendar year equals the housing
13 credit dollar amount previously allocated to any project that does
14 not become a qualified low-income housing project within the
15 period required by this section or to any project with respect to
16 which an allocation is canceled by mutual consent of the California
17 Tax Credit Allocation Committee and the allocation recipient.

18 (4) ~~Five hundred thousand dollars (\$500,000)~~ *Twenty-five*
19 *million dollars (\$25,000,000)* per calendar year for projects to
20 provide farmworker housing, as defined in subdivision (h) of
21 Section 50199.7 of the Health and Safety Code.

22 (5) The amount of any unallocated or returned credits under
23 former Sections 17053.14, 23608.2, and 23608.3, as those sections
24 read prior to January 1, 2009, until fully exhausted for projects to
25 provide farmworker housing, as defined in subdivision (h) of
26 Section 50199.7 of the Health and Safety Code.

27 (h) The term “compliance period” as defined in Section 42(i)(1)
28 of the Internal Revenue Code is modified to mean, with respect to
29 any building, the period of 30 consecutive taxable years beginning
30 with the first taxable year of the credit period with respect thereto.

31 (i) Section 42(j) of the Internal Revenue Code shall not be
32 applicable and the following requirements of this section shall be
33 set forth in a regulatory agreement between the California Tax
34 Credit Allocation Committee and the housing sponsor, ~~which and~~
35 *the regulatory* agreement shall be subordinated, when required, to
36 any lien or encumbrance of any banks or other institutional lenders
37 to the project. The regulatory agreement entered into pursuant to
38 subdivision (f) of Section 50199.14 of the Health and Safety Code
39 shall apply, provided that the agreement includes all of the
40 following provisions:

1 (1) A term not less than the compliance period.

2 (2) A requirement that the agreement be recorded in the official
3 records of the county in which the qualified low-income housing
4 project is located.

5 (3) A provision stating which state and local agencies can
6 enforce the regulatory agreement in the event the housing sponsor
7 fails to satisfy any of the requirements of this section.

8 (4) A provision that the regulatory agreement shall be deemed
9 a contract enforceable by tenants as third-party beneficiaries thereto
10 and that allows individuals, whether prospective, present, or former
11 occupants of the building, who meet the income limitation
12 applicable to the building, the right to enforce the regulatory
13 agreement in any state court.

14 (5) A provision incorporating the requirements of Section 42
15 of the Internal Revenue Code as modified by this section.

16 (6) A requirement that the housing sponsor notify the California
17 Tax Credit Allocation Committee or its designee if there is a
18 determination by the Internal Revenue Service that the project is
19 not in compliance with Section 42(g) of the Internal Revenue Code.

20 (7) A requirement that the housing sponsor, as security for the
21 performance of the housing sponsor's obligations under the
22 regulatory agreement, assign the housing sponsor's interest in rents
23 that it receives from the project, provided that until there is a
24 default under the regulatory agreement, the housing sponsor is
25 entitled to collect and retain the rents.

26 (8) The remedies available in the event of a default under the
27 regulatory agreement that is not cured within a reasonable cure
28 period, include, but are not limited to, allowing any of the parties
29 designated to enforce the regulatory agreement to collect all rents
30 with respect to the project; taking possession of the project and
31 operating the project in accordance with the regulatory agreement
32 until the enforcer determines the housing sponsor is in a position
33 to operate the project in accordance with the regulatory agreement;
34 applying to any court for specific performance; securing the
35 appointment of a receiver to operate the project; or any other relief
36 as may be appropriate.

37 (j) (1) The committee shall allocate the housing credit on a
38 regular basis consisting of two or more periods in each calendar
39 year during which applications may be filed and considered. The
40 committee shall establish application filing deadlines, the maximum

percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code. *Code, respectively.*

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units ~~is comprised of~~ *are* low-income units with three ~~and~~ *or* more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the credit allowed under this section exceeds the net tax, the excess-credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.

This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing-credits, *credit*, remains in effect.

(r) The amendments to this section made by ~~the act adding this subdivision~~ *Chapter 1222 of the Statutes of 1993* shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 4. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the ~~“tax”~~ ~~(as “tax,” as defined by Section 23036)~~ 23036, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code ~~of 1986~~, except as otherwise provided in this section.

1 (2) “Taxpayer,” for purposes of this section, means the sole
2 owner in the case of a “C” corporation, the partners in the case of
3 a partnership, and the shareholders in the case of an “S”
4 corporation.

5 (3) “Housing sponsor,” for purposes of this section, means the
6 sole owner in the case of a “C” corporation, the partnership in the
7 case of a partnership, and the “S” corporation in the case of an “S”
8 corporation.

9 (b) (1) The amount of the credit allocated to any housing
10 sponsor shall be authorized by the California Tax Credit Allocation
11 Committee, or any successor thereof, based on a project’s need
12 for the credit for economic feasibility in accordance with the
13 requirements of this section.

14 (A) The low-income housing project shall be located in
15 California and shall meet either of the following requirements:

16 (i) Except for projects to provide farmworker housing, as defined
17 in subdivision (h) of Section 50199.7 of the Health and Safety
18 Code, that are allocated credits solely under the set-aside described
19 in subdivision (c) of Section 50199.20 of the Health and Safety
20 Code, the project’s housing sponsor has been allocated by the
21 California Tax Credit Allocation Committee a credit for federal
22 income tax purposes under Section 42 of the Internal Revenue
23 Code.

24 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
25 Internal Revenue Code.

26 (B) The California Tax Credit Allocation Committee shall not
27 require fees for the credit under this section in addition to those
28 fees required for applications for the tax credit pursuant to Section
29 42 of the Internal Revenue Code. The committee may require a
30 fee if the application for the credit under this section is submitted
31 in a calendar year after the year the application is submitted for
32 the federal tax credit.

33 (C) (i) For a project that receives a preliminary reservation of
34 the state low-income housing tax credit, allowed pursuant to
35 subdivision (a), on or after January 1, 2009, and before January 1,
36 2016, the credit shall be allocated to the partners of a partnership
37 owning the project in accordance with the partnership agreement,
38 regardless of how the federal low-income housing tax credit with
39 respect to the project is allocated to the partners, or whether the
40 allocation of the credit under the terms of the agreement has

1 substantial economic effect, within the meaning of Section 704(b)
2 of the Internal Revenue Code.

3 (ii) To the extent the allocation of the credit to a partner under
4 this section lacks substantial economic effect, any loss or deduction
5 otherwise allowable under this part that is attributable to the sale
6 or other disposition of that partner's partnership interest made prior
7 to the expiration of the federal credit shall not be allowed in the
8 taxable year in which the sale or other disposition occurs, but shall
9 instead be deferred until and treated as if it occurred in the first
10 taxable year immediately following the taxable year in which the
11 federal credit period expires for the project described in clause (i).

12 (iii) This subparagraph shall not apply to a project that receives
13 a preliminary reservation of state low-income housing tax credits
14 under the set-aside described in subdivision (c) of Section 50199.20
15 of the Health and Safety Code unless the project also receives a
16 preliminary reservation of federal low-income housing tax credits.

17 (iv) This subparagraph shall cease to be operative with respect
18 to any project that receives a preliminary reservation of a credit
19 on or after January 1, 2016.

20 (2) (A) The California Tax Credit Allocation Committee shall
21 certify to the housing sponsor the amount of tax credit under this
22 section allocated to the housing sponsor for each credit period.

23 (B) In the case of a partnership or an "S" corporation, the
24 housing sponsor shall provide a copy of the California Tax Credit
25 Allocation Committee certification to the taxpayer.

26 (C) The taxpayer shall, upon request, provide a copy of the
27 certification to the Franchise Tax Board.

28 (D) All elections made by the taxpayer pursuant to Section 42
29 of the Internal Revenue Code shall apply to this section.

30 (E) (i) Except as described in clause (ii), for buildings located
31 in designated difficult development areas (DDAs) or qualified
32 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
33 Internal Revenue Code, credits may be allocated under this section
34 in the amounts prescribed in subdivision (c), provided that the
35 amount of credit allocated under Section 42 of the Internal Revenue
36 Code is computed on 100 percent of the qualified basis of the
37 building.

38 (ii) Notwithstanding clause (i), the California Tax Credit
39 Allocation Committee may allocate the credit for buildings located
40 in DDAs or QCTs that are restricted to having 50 percent of its

1 occupants be special needs households, as defined in the California
2 Code of Regulations by the California Tax Credit Allocation
3 Committee, even if the taxpayer receives federal credits pursuant
4 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
5 that the credit allowed under this section shall not exceed 30
6 percent of the eligible basis of the building.

7 ~~(G)~~

8 (F) (i) The California Tax Credit Allocation Committee may
9 allocate a credit under this section in exchange for a credit allocated
10 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
11 amounts up to 30 percent of the eligible basis of a building if the
12 credits allowed under Section 42 of the Internal Revenue Code are
13 reduced by an equivalent amount.

14 (ii) An equivalent amount shall be determined by the California
15 Tax Credit Allocation Committee based upon the relative amount
16 required to produce an equivalent state tax credit to the taxpayer.

17 (c) Section 42(b) of the Internal Revenue Code shall be modified
18 as follows:

19 (1) In the case of any qualified low-income building placed in
20 service by the housing sponsor during 1987, the term “applicable
21 percentage” means 9 percent for each of the first three years and
22 3 percent for the fourth year for new buildings (whether or not the
23 building is federally subsidized) and for existing buildings.

24 (2) In the case of any qualified low-income building that receives
25 an allocation after 1989 and is a new building not federally
26 subsidized, the term “applicable percentage” means the following:

27 (A) For each of the first three years, the percentage prescribed
28 by the Secretary of the Treasury for new buildings that are not
29 federally subsidized for the taxable year, determined in accordance
30 with the requirements of Section 42(b)(2) of the Internal Revenue
31 Code, *Code* in lieu of the percentage prescribed in Section
32 42(b)(1)(A) of the Internal Revenue Code.

33 (B) For the fourth year, the difference between 30 percent and
34 the sum of the applicable percentages for the first three years.

35 (3) In the case of any qualified low-income building that receives
36 an allocation after 1989 and that is a new building that is federally
37 subsidized or that is an existing building that is “at risk of
38 conversion,” the term “applicable percentage” means the following:

1 (A) For each of the first three years, the percentage prescribed
2 by the Secretary of the Treasury for new buildings that are federally
3 subsidized for the taxable year.

4 (B) For the fourth year, the difference between 13 percent and
5 the sum of the applicable percentages for the first three years.

6 (4) For purposes of this section, the term “at risk of conversion,”
7 with respect to an existing property means a property that satisfies
8 all of the following criteria:

9 (A) The property is a multifamily rental housing development
10 in which at least 50 percent of the units receive governmental
11 assistance pursuant to any of the following:

12 (i) New construction, substantial rehabilitation, moderate
13 rehabilitation, property disposition, and loan management set-aside
14 programs, or any other program providing project-based assistance
15 pursuant to Section 8 of the United States Housing Act of 1937,
16 Section 1437f of Title 42 of the United States Code, as amended.

17 (ii) The Below-Market-Interest-Rate Program pursuant to
18 Section 221(d)(3) of the National Housing Act, Sections
19 1715l(d)(3) and (5) of Title 12 of the United States Code.

20 (iii) Section 236 of the National Housing Act, Section 1715z-1
21 of Title 12 of the United States Code.

22 (iv) Programs for rent supplement assistance pursuant to Section
23 101 of the Housing and Urban Development Act of 1965, Section
24 1701s of Title 12 of the United States Code, as amended.

25 (v) Programs pursuant to Section 515 of the Housing Act of
26 1949, Section 1485 of Title 42 of the United States Code, as
27 amended.

28 (vi) The low-income housing credit program set forth in Section
29 42 of the Internal Revenue Code.

30 (B) The restrictions on rent and income levels will terminate or
31 the federally insured mortgage on the property is eligible for
32 prepayment any time within five years before or after the date of
33 application to the California Tax Credit Allocation Committee.

34 (C) The entity acquiring the property enters into a regulatory
35 agreement that requires the property to be operated in accordance
36 with the requirements of this section for a period equal to the
37 greater of 55 years or the life of the property.

38 (D) The property satisfies the requirements of Section 42(e) of
39 the Internal Revenue Code regarding rehabilitation expenditures,

1 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
2 apply.

3 (4) (A) *In the case of any qualified low-income building that*
4 *is (i) restricted to farmworker housing, as defined by Section*
5 *50199.77 of the Health and Safety Code, and (ii) is federally*
6 *subsidized, the term “applicable percentage” means for each of*
7 *the first three years, 20 percent of the qualified basis of the*
8 *building, and for the fourth year, 15 percent of the qualified basis*
9 *of the building.*

10 (B) *The California Tax Credit Allocation Committee may*
11 *allocate the credit pursuant to this paragraph even if the taxpayer*
12 *receives federal credits, pursuant to Section 42(d)(5)(B) of the*
13 *Internal Revenue Code, and state credits or only state credits.*

14 (d) The term “qualified low-income housing project” as defined
15 in Section 42(c)(2) of the Internal Revenue Code is modified by
16 adding the following requirements:

17 (1) The taxpayer shall be entitled to receive a cash distribution
18 from the operations of the project, after funding required reserves,
19 that at the election of the taxpayer, is equal to:

20 (A) An amount not to exceed 8 percent of the lesser of:

21 (i) The owner equity, that shall include the amount of the capital
22 contributions actually paid to the housing sponsor and shall not
23 include any amounts until they are paid on an investor note.

24 (ii) Twenty percent of the adjusted basis of the building as of
25 the close of the first taxable year of the credit period.

26 (B) The amount of the cashflow from those units in the building
27 that are not low-income units. For purposes of computing cashflow
28 under this subparagraph, operating costs shall be allocated to the
29 low-income units using the “floor space fraction,” as defined in
30 Section 42 of the Internal Revenue Code.

31 (C) Any amount allowed to be distributed under subparagraph
32 (A) that is not available for distribution during the first five years
33 of the compliance period may be accumulated and distributed any
34 time during the first 15 years of the compliance period but not
35 thereafter.

36 (2) The limitation on return shall apply in the aggregate to the
37 partners if the housing sponsor is a partnership and in the aggregate
38 to the shareholders if the housing sponsor is an “S” corporation.

39 (3) The housing sponsor shall apply any cash available for
40 distribution in excess of the amount eligible to be distributed under

1 paragraph (1) to reduce the rent on rent-restricted units or to
2 increase the number of rent-restricted units subject to the tests of
3 Section 42(g)(1) of the Internal Revenue Code.

4 (e) The provisions of Section 42(f) of the Internal Revenue Code
5 shall be modified as follows:

6 (1) The term “credit period” as defined in Section 42(f)(1) of
7 the Internal Revenue Code is modified by substituting “four taxable
8 years” for “10 taxable years.”

9 (2) The special rule for the first taxable year of the credit period
10 under Section 42(f)(2) of the Internal Revenue Code shall not apply
11 to the tax credit under this section.

12 (3) Section 42(f)(3) of the Internal Revenue Code is modified
13 to read:

14 If, as of the close of any taxable year in the compliance period,
15 after the first year of the credit period, the qualified basis of any
16 building exceeds the qualified basis of that building as of the close
17 of the first year of the credit period, the housing sponsor, to the
18 extent of its tax credit allocation, shall be eligible for a credit on
19 the excess in an amount equal to the applicable percentage
20 determined pursuant to subdivision (c) for the four-year period
21 beginning with the later of the taxable years in which the increase
22 in qualified basis occurs.

23 (f) The provisions of Section 42(h) of the Internal Revenue
24 Code shall be modified as follows:

25 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
26 applicable and instead the following provisions shall be applicable:

27 The total amount for the four-year credit period of the housing
28 credit dollars allocated in a calendar year to any building shall
29 reduce the aggregate housing credit dollar amount of the California
30 Tax Credit Allocation Committee for the calendar year in which
31 the allocation is made.

32 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
33 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
34 not be applicable.

35 (g) The aggregate housing credit dollar amount that may be
36 allocated annually by the California Tax Credit Allocation
37 Committee pursuant to this section, Section 12206, and Section
38 17058 shall be an amount equal to the sum of all the following:

39 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
40 year, and, for the 2002 calendar year and each calendar year

thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(4) ~~Five hundred thousand dollars (\$500,000)~~ *Twenty-five million dollars (\$25,000,000)* per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and ~~this~~ *the regulatory* agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply,

1 provided that the agreement includes all of the following
2 provisions:

3 (1) A term not less than the compliance period.

4 (2) A requirement that the agreement be recorded in the official
5 records of the county in which the qualified low-income housing
6 project is located.

7 (3) A provision stating which state and local agencies can
8 enforce the regulatory agreement in the event the housing sponsor
9 fails to satisfy any of the requirements of this section.

10 (4) A provision that the regulatory agreement shall be deemed
11 a contract enforceable by tenants as third-party beneficiaries
12 thereto, and that allows individuals, whether prospective, present,
13 or former occupants of the building, who meet the income
14 limitation applicable to the building, the right to enforce the
15 regulatory agreement in any state court.

16 (5) A provision incorporating the requirements of Section 42
17 of the Internal Revenue Code as modified by this section.

18 (6) A requirement that the housing sponsor notify the California
19 Tax Credit Allocation Committee or its designee if there is a
20 determination by the Internal Revenue Service that the project is
21 not in compliance with Section 42(g) of the Internal Revenue Code.

22 (7) A requirement that the housing sponsor, as security for the
23 performance of the housing sponsor's obligations under the
24 regulatory agreement, assign the housing sponsor's interest in rents
25 that it receives from the project, provided that until there is a
26 default under the regulatory agreement, the housing sponsor is
27 entitled to collect and retain the rents.

28 (8) ~~A provision that the~~ *The* remedies available in the event of
29 a default under the regulatory agreement that is not cured within
30 a reasonable cure period include, but are not limited to, allowing
31 any of the parties designated to enforce the regulatory agreement
32 to collect all rents with respect to the project; taking possession of
33 the project and operating the project in accordance with the
34 regulatory agreement until the enforcer determines the housing
35 sponsor is in a position to operate the project in accordance with
36 the regulatory agreement; applying to any court for specific
37 performance; securing the appointment of a receiver to operate
38 the project; or any other relief as may be appropriate.

39 (j) (1) The committee shall allocate the housing credit on a
40 regular basis consisting of two or more periods in each calendar

1 year during which applications may be filed and considered. The
2 committee shall establish application filing deadlines, the maximum
3 percentage of federal and state low-income housing tax credit
4 ceiling that may be allocated by the committee in that period, and
5 the approximate date on which allocations shall be made. If the
6 enactment of federal or state law, the adoption of rules or
7 regulations, or other similar events prevent the use of two allocation
8 periods, the committee may reduce the number of periods and
9 adjust the filing deadlines, maximum percentage of credit allocated,
10 and allocation dates.

11 (2) The committee shall adopt a qualified allocation plan, as
12 provided in Section 42(m)(1) of the Internal Revenue Code. In
13 adopting this plan, the committee shall comply with the provisions
14 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
15 ~~Code~~. *Code, respectively.*

16 (3) Notwithstanding Section 42(m) of the Internal Revenue
17 Code, the California Tax Credit Allocation Committee shall
18 allocate housing credits in accordance with the qualified allocation
19 plan and regulations, which shall include the following provisions:

20 (A) All housing sponsors, as defined by paragraph (3) of
21 subdivision (a), shall demonstrate at the time the application is
22 filed with the committee that the project meets the following
23 threshold requirements:

24 (i) The housing sponsor shall demonstrate ~~that~~ there is a need
25 for low-income housing in the community or region for which it
26 is proposed.

27 (ii) The project's proposed financing, including tax credit
28 proceeds, shall be sufficient to complete the project and shall be
29 adequate to operate the project for the extended use period.

30 (iii) The project shall have enforceable financing commitments,
31 either construction or permanent financing, for at least 50 percent
32 of the total estimated financing of the project.

33 (iv) The housing sponsor shall have and maintain control of the
34 site for the project.

35 (v) The housing sponsor shall demonstrate that the project
36 complies with all applicable local land use and zoning ordinances.

37 (vi) The housing sponsor shall demonstrate that the project
38 development team has the experience and the financial capacity
39 to ensure project completion and operation for the extended use
40 period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three ~~and~~ or more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as

1 defined in Section 50199.21 of the Health and Safety Code. Any
2 amount of credit set aside for rural areas remaining on or after
3 October 31 of any calendar year shall be available for allocation
4 to any eligible project. No amount of credit set aside for rural areas
5 shall be considered available for any eligible project so long as
6 there are eligible rural applications pending on October 31.

7 (k) Section 42(l) of the Internal Revenue Code shall be modified
8 as follows:

9 The term “secretary” shall be replaced by the term “California
10 Franchise Tax Board.”

11 (l) In the case where the ~~state~~ credit allowed under this section
12 exceeds the “tax,” the excess may be carried over to reduce the
13 “tax” in the following year, and succeeding *taxable* years if
14 necessary, until the credit has been exhausted.

15 (m) A project that received an allocation of a 1989 federal
16 housing credit dollar amount shall be eligible to receive an
17 allocation of a 1990 state housing credit dollar amount, subject to
18 all of the following conditions:

19 (1) The project was not placed in service prior to 1990.

20 (2) To the extent the amendments made to this section by the
21 Statutes of 1990 conflict with any provisions existing in this section
22 prior to those amendments, the prior provisions of law shall prevail.

23 (3) Notwithstanding paragraph (2), a project applying for an
24 allocation under this subdivision shall be subject to the
25 requirements of paragraph (3) of subdivision (j).

26 (n) The credit period with respect to an allocation of credit in
27 1989 by the California Tax Credit Allocation Committee of which
28 any amount is attributable to unallocated credit from 1987 or 1988
29 shall not begin until after December 31, 1989.

30 (o) The provisions of Section 11407(a) of Public Law 101-508,
31 relating to the effective date of the extension of the low-income
32 housing credit, shall apply to calendar years after 1989.

33 (p) The provisions of Section 11407(c) of Public Law 101-508,
34 relating to election to accelerate credit, shall not apply.

35 (q) (1) A corporation may elect to assign any portion of any
36 credit allowed under this section to one or more affiliated
37 corporations for each taxable year in which the credit is allowed.
38 For purposes of this subdivision, “affiliated corporation” has the
39 meaning provided in subdivision (b) of Section 25110, as that
40 section was amended by Chapter 881 of the Statutes of 1993, as

1 of the last day of the taxable year in which the credit is allowed,
2 except that “100 percent” is substituted for “more than 50 percent”
3 wherever it appears in the section, as that section was amended by
4 Chapter 881 of the Statutes of 1993, and “voting common stock”
5 is substituted for “voting stock” wherever it appears in the section,
6 as that section was amended by Chapter 881 of the Statutes of
7 1993.

8 (2) The election provided in paragraph (1):

9 (A) May be based on any method selected by the corporation
10 that originally receives the credit.

11 (B) Shall be irrevocable for the taxable year the credit is allowed,
12 once made.

13 (C) May be changed for any subsequent taxable year if the
14 election to make the assignment is expressly shown on each of the
15 returns of the affiliated corporations that assign and receive the
16 credits.

17 (r) Any unused credit may continue to be carried forward, as
18 provided in subdivision (l), until the credit has been exhausted.

19 This section shall remain in effect on and after December 1,
20 1990, for as long as Section 42 of the Internal Revenue Code,
21 relating to low-income housing ~~credits~~, *credit*, remains in effect.

22 (s) The amendments to this section made by ~~the act adding this~~
23 ~~subdivision~~ *Chapter 1222 of the Statutes of 1993* shall apply only
24 to taxable years beginning on or after January 1, 1994, except that
25 paragraph (1) of subdivision (q), as amended, shall apply to taxable
26 years beginning on or after January 1, 1993.

27 SEC. 5. This act provides for a tax levy within the meaning of
28 Article IV of the Constitution and shall go into immediate effect.

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